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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
BEN SLATTERY,

Appellant,

v.

SOUTHWEST AIR POLLUTION
CONTROL AUTHORITY,

Respondent.

PCHB No. 85-9

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER, the appeal of a notice of violation and civil penalty of \$50 for open air burning of prohibited materials in violation of the State Clean Air Act, came on for formal hearing before the Pollution Control Hearings Board; Lawrence J. Faulk, Chairman (presiding), on April 4, 1985, at Vancouver. The formal hearing was electronically recorded. Gayle Rothrock and Wick Dufford have reviewed the record and listened to the recording of the hearing.

1 Appellant Mr. Slattery appeared and represented himself.
2 Respondent Southwest Air Pollution Control Authority (SWAPCA) appeared
3 by its attorney David Jahn.

4 Witnesses were sworn and testified. Exhibits were examined. From
5 the testimony heard and the exhibits examined, the Board makes these

6 FINDINGS OF FACT

7 I

8 Respondent, pursuant to RCW 43.21B.260, has filed with this Board
9 a certified copy of its Regulation I containing respondent's
10 regulations and amendments thereto, which are noticed.

11 II

12 On December 11, 1984, in the afternoon, appellant allowed or
13 caused an outdoor fire of prohibited materials by burning aerosol
14 cans, carpeting, toys, and other plastic items at 1218 NW 98th Street,
15 Vancouver, Washington.

16 III

17 There was one fire pile 6 feet wide by 3 feet high consisting of
18 prohibited materials such as cans, carpeting and toys. The pile was
19 emitting grey smoke.

20 IV

21 On December 11, 1984, respondent SWAPCA's inspector, while on
22 routine patrol, arrived at the fire site at 1:30 p.m., observed
23 prohibited materials and discussed the codes and practices of open
24 burning with appellant. The appellant was requested to put out the
25 fire which he accomplished about 1:49 p.m.

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
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1 The fall burn season was in progress on the date of the
2 violation. The fall burn season runs from October 1 to December 15 of
3 each year, but is directed toward the burning of natural residues from
4 yard care. Prohibited materials may not be burned at any time.

5 The appellant was issued and signed a field notice of violation of
6 Section 400-035 of Regulation I of SWAPCA.

7 V

8 On December 11, 1984, appellant was issued a regular notice of
9 violation and a letter from the Executive Director of respondent
10 agency levying a \$50 fine which he received January 4, 1985. This
11 same letter stated that an additional \$25 fine suspended on March 11,
12 1981 was also due and payable. From this appellant appealed to this
13 Board January 9, 1985.

14 VI

15 Appellant indicated that he had contacted the Hazeldell Fire
16 Department and they said it was "OK" to burn. As a result, he had not
17 tried to obtain a burn permit because he did not think he needed one.
18 He testified that he had just moved into the house and that he was
19 cleaning the house. He explained that he had seen a sign that said
20 "Open Burn" and, therefore, thought it was all right to burn. He put
21 the fire out when requested to do so by the inspector.

22 VII

23 Appellant has received one prior violation of SWAPCA Regulation I.

24 VIII

25 Any Conclusion of Law which should be deemed a Finding of Fact is

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
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1 hereby adopted as such.

2 From these Findings the Board comes to these

3 CONCLUSIONS OF LAW

4 I

5 The Legislature of the state of Washington has enacted the
6 following policy on outdoor fires:

7 It is the policy of the state to achieve and
8 maintain high levels of air quality and to this end
9 to minimize to the greatest extent reasonably
10 possible the burning of outdoor fires. Consistent
11 with this policy, the legislature declares that
such fires should be allowed only on a limited
basis under strict regulation and close control.
(RCW 70.94.740).

12 Pursuant to this and other legislative authority, the respondent has
13 adopted its Regulation I, Section 400-035, which provides in relevant
14 part:

15 No person shall ignite, cause to be ignited, permit
16 to be ignited, or suffer, allow, or maintain any
17 open fire within the jurisdiction of the Authority,
except as provided in this Regulation.

18

19 (2) Open burning may be done under permit:

20 (a) Burning permits may be provided by
21 the local fire department, fire district
or Washington State Department of Natural
Resources.

22 (b) No permit shall be issued unless the
23 Control Officer is satisfied that:

24 (i) No practical alternate method is
25 available for the disposal of the
26 material to be burned. (The
Authority has a written Open Outdoor
Fire Policy describing times, areas

1 and kinds of permitted open fires).

2 (ii) No salvage operation by open
3 burning will be conducted.

4 (iii) No garbage will be burned.

5 (iv) No animals will be disposed of
6 by burning.

7 (v) No material containing asphalt,
8 petroleum products, paints, rubber
9 products, plastic or any substance
10 which normally emits dense smoke or
11 obnoxious odors will be burned.

12 Appellant allowed open burning of prohibited material which is in
13 violation of section 400-035(2).

14 II

15 Before igniting outdoor fires, it is the responsibility of
16 citizens to become aware of and adhere to air pollution control rules,
17 such as respondent's Regulation I.

18 Appellant has had prior contact with respondent agency and should
19 have known better. Therefore, the penalty should be affirmed.

20 III

21 Any Finding of Fact which should be deemed a Conclusion of Law is
22 hereby adopted as such.

23 From these Conclusions of Law, the Pollution Control Hearings
24 Board enters this
25

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
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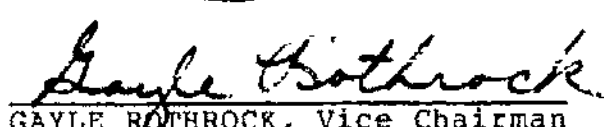
ORDER


The notice of violation and \$50 civil penalty is affirmed; and the \$25 fine suspended on March 11, 1981 is due and payable.

DONE this 20th day of May, 1985.

POLLUTION CONTROL HEARINGS BOARD

 5/1/85
LAWRENCE J. FAULK, Chairman


GAYLE ROTHROCK, Vice Chairman


WICK DUFFORD, Lawyer Member

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